No. 03-21-00428-CV

In the Court of Appeals for the Third Judicial District Austin, Texas

GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS; STATE OF TEXAS; AND KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS,

Appellants,

v.

LA JOYA INDEPENDENT SCHOOL DISTRICT, ET AL., SHANETRA MILES-FOWLER, ELIAS PONVERT, AND KIM TAYLOR AUSTIN COMMUNITY COLLEGE DISTRICT, HOUSTON INDEPENDENT SCHOOL DISTRICT, DALLAS INDEPENDENT SCHOOL DISTRICT, NORTHSIDE INDEPENDENT SCHOOL DISTRICT, AUSTIN INDEPENDENT SCHOOL DISTRICT, ALDINE INDEPENDENT SCHOOL DISTRICT, SPRING INDEPENDENT SCHOOL DISTRICT,

Appellees.

On Appeal from the
353rd Judicial District Court, Travis County

RESPONSE TO EMERGENCY MOTION FOR TEMPORARY ANTI-SUIT INJUNCTION

To the Honorable Third Court of Appeals:

Appellees/Intervenors Plaintiffs Houston Independent School District, Dallas Independent School District, Northside Independent School District, Austin Independent School District, Aldine Independent School District, and Spring Independent School District (collectively, the "Intervenor School Districts") have filed a motion pursuant to Texas Rule of Appellate Procedure 29.3, asking this Court to enjoin Governor Abbott, Attorney General Paxton, and the State of Texas from filing suit to stop school districts from continuing to defy Texas law. For the reasons discussed herein, this extraordinary request for relief should be denied.

I. Background

Approximately three weeks after Governor Abbott issued GA-38, Intervenor School Districts filed a petition-in-intervention, joining a lawsuit filed by other school districts seeking to prohibit the Governor from enforcing GA-38. The trial court issued a temporary restraining order and, following a hearing, issued a temporary restraining order against Appellants on August 27, 2021. Appellants immediately superseded the temporary injunction by filing a notice of appeal, which is presently pending before this Court; Appellants' brief is due October 4, 2021.

The day before the trial court issued the temporary injunction that is the subject of the above-captioned appeal, the Texas Supreme Court issued an order in another GA-38 lawsuit pending on appeal in the Fourth Court of Appeals. In that order, the Texas Supreme Court noted that "[t]his case, and others like it, are not about whether people should wear masks or whether the government should make them do it." Order at 1, *In re Abbott*, No. 21-0720 (Appendix A). Instead, "these cases ask

courts to determine which government officials have the legal authority to decide what the government's position on such questions will be. The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels." *Id.* The Court concluded that the "status quo should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought." *Id.*

Perhaps as a result of the Texas Supreme Court's August 26 order, Intervenor School Districts did not file an Emergency Motion for Temporary Order under Rule 29.3, seeking to reinstate the temporary injunction during the pendency of this appeal. Therefore, there is no order in effect that excepts Intervenor School District from the requirements of GA-38.

II. Summary of the Argument

As Intervenor School Districts have detailed in their Emergency Motion, the State of Texas has brought suit against various school districts across the state who persist in defying GA-38, which carries the force and effect of law and which is not subject to any injunction permitting school districts to ignore its requirements. Intervnor School Districts now ask this Court to effectively prevent the State from exercising its inherent interest as a sovereign entity to ensure local officials obey state law.

Intervenor School Districts are not entitled to the relief sought in their Emergency Motion for the following reasons:

(1) There is no legal precedent for this Court to enjoin the State's Chief Legal Officer from fulfilling his constitutional duty in representing the State or to enjoin the State from protecting the sanctity of its laws;

(2) Intervenor School Districts seek to upset, not preserve, the status quo;

(3) Intervenor School Districts have not satisfied their burden to show they are entitled to an anti-suit injunction; and

(4) The suits filed by the State of Texas are not contrary to representations made in the underlying Travis County proceeding on appeal to this Court because they are not enforcement actions.

III. This is an Unprecedented Attempt to Enjoin the Attorney General From Fulfilling His Constitutional Duty and the State From Protecting Its Laws

"The Attorney General, as the chief legal officer of the State, has broad discretionary power in conducting his legal duty and responsibility to represent the state." *Terrazas v. Ramirez*, 829 S.W.2d 712, 721–22 (Tex. 1991). In fact, the Attorney General has a constitutional duty to represent the State of Texas. Tex. Const. art. 4, § 22. Moreover, as a sovereign entity, the State of Texas has the right to ensure the operations of its political subdivisions in accordance with its laws. *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020).

Yet what Intervenor School Districts are asking this Court to do—without citation to any legal authority on this issue—is to enjoin the State of Texas and its Attorney General, along with its Governor, from filing suits to ensure local officials operate in accordance with state law. Even if such an injunction affecting the operations of the executive branch of government were permissible—and Appellants vehemently contend it is not—such an injunction may not be granted by this Court.

Rather, the only court capable of enjoining an officer of the executive branch is the Texas Supreme Court. Tex. Gov't Code § 22.002(c).

IV. The Emergency Motion is An Attempt to Upset, Not Preserve, the Status Quo

Under Rule 29.3, "[w]hen an appeal from an interlocutory order is perfected, the appellate court may make any temporary orders necessary to preserve the parties' rights until disposition of the appeal." Tex. R. App. P. 29.3. The Supreme Court has explained that Rule 29.3 "gives an appellate court great flexibility in preserving the status quo based on the unique facts and circumstances presented." *In re Geomet Recycling LLC*, 578 S.W.3d 82, 89 (Tex. 2019). The rule "broadly empower[s] the court of appeals to preserve parties' rights when necessary." *Id.*

The status quo is "the last, actual, peaceable, non-contested status which preceded the pending controversy." *Clint Indep. School Dist. v. Marquez*, 487 S.W.3d 538, 556 (Tex. 2016). Contrary to the assertion of Intervenor School Districts, the last, actual, peaceable, non-contested status preceding the pending controversy is not that the Travis County suit was stayed pending appeal. By very definition, a pending lawsuit is not a peaceable, non-contested status. Instead, the status quo as it relates to the challenges to GA-38's ban on facemask mandates has been recognized by the Texas Supreme Court as "gubernatorial oversight of [decisions regarding the government's position on masks] at both the state and local levels." *In re Abbott*, No. 21-0720 (Appendix A). Therefore, in filing this Emergency Motion, Intervenor School Districts are asking this Court to upend the status quo and, effectively, overrule the Texas Supreme Court's decision as to the status quo regarding GA-38.

V. Intervenor School Districts Have Not Met Their Burden to Show Entitlement to Anti-Suit Injunction

An anti-suit injunction "[a] unique and extraordinary remedy" that "will issue 'only in very special circumstances.'" *Wyrick v. Business Bank of Texas, N.A.*, 577 S.W.3d 336, 356 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (quoting *Golden Rule Ins. Co. v. Harper*, 925 S.W.2d 649, 651 (Tex. 1996) (per curiam)). Those special circumstances are: (1) addressing a threat to a court's jurisdiction; (2) preventing the evasion of important public policy; (3) preventing a multiplicity of suits; and (4) protecting a party from vexatious or harassing litigation. *Id.*; *see also Frost Nat'l Bank v. Fernandez*, 315 S.W.3d 494, 512 (Tex. 2010); *Golden Rule*, 925 S.W.2d at 651; *Howell v. Tex. Workers' Comp. Comm'n*, 143 S.W.3d 416, 433-34 (Tex. App.—Austin 2004, pet. denied).

Importantly, anti-suit injunctions should be "employed sparingly and carefully and only in the most compelling circumstances when clear equity demands it." *Wyrick*, 577 S.W.3d at 356 (internal quotations omitted). As described below, such compelling circumstances do not exist to employ this unique and extraordinary remedy against Appellants. In fact, Intervenor School Districts site to no cases where an anti-suit injunction was applied to the executive branch or to the State of Texas.

A. Suits Filed by the State of Texas Are Not a Threat to the Travis County District Court's Jurisdiction.

Intervenor School Districts argue that the Travis County District Court from which this appeal comes acquired dominant jurisdiction over all lawsuits involving GA-38 and school districts. This argument fails because (1) Intervenor School Districts are distorting a venue doctrine to make jurisdictional arguments and (2) the

suits filed by the State of Texas are (a) not within the jurisdiction of the Travis County District Court, (b) do not arise out of the same set of facts as the Travis County suit, and (c) require for adjudication parties who are not within the jurisdiction of the Travis County District Court.

"Despite its name, the doctrine of dominant jurisdiction is not jurisdictional." *See Gordon v. Jones*, 196 S.W.3d 376, 382–83 (Tex. App.—Houston [1st Dist.] 2006, no pet.). Dominant jurisdiction has to do with venue and applies only when venue is proper in two or more Texas counties or courts. *Gonzalez v. Reliant Energy, Inc.*, 159 S.W.3d 615, 622 (Tex. 2005). However, in this case, Intervenor School Districts attempt to take this venue theory and turn it into a state-wide jurisdictional clamp for any suit against any school district related to GA-38.

Intervenor School Districts rely on *Wyrick v. Business Bank of Texas, N.A.*, 577 S.W.3d 336 (Tex. App.—Houston [14th Dist.] 2019, no pet.) to support their argument that this Court has the power to enjoin the Attorney General and the State of Texas in subsequent litigation involving different parties, but that reliance is misplaced. As the *Wyrick* court recognized, dominant jurisdiction only applies where "multiple suits are inherently interrelated and venue is proper in each county." *Id.* at 357. Neither element is met here.

In determining whether an inherent interrelationship exists between two lawsuits, "courts should be guided by the rule governing persons to be joined if feasible and the compulsory counterclaim rule." *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 247 (Tex. 1988), overruled on other grounds, *In re J.B. Hunt Transp., Inc.*, 492 S.W.3d at 292–93.

The compulsory counterclaim rule, located in Texas Rule of Civil Procedure 97(a), applies where the claim: (1) is within the jurisdiction of the court; (2) not the subject of a pending action; (3) which at the time of filing the pleading the pleader has against any opposing party; (4) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and (5) does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction. *In re Tex. Christian Univ.*, 571 S.W.3d 384, 389 (Tex. App.—Dallas 2019, no pet.), reh'g denied (Feb. 13, 2019) (citing Tex. R. Civ. P. 97(a)). Here, the first, fourth, and fifth factors are determinative: dominant jurisdiction does not apply.

1. Suits Filed by the State of Texas Are Not Within the Jurisdiction of Travis County

Intervenor School Districts are incorrect in alleging that the suits filed by the State against school district defendants who persist in violating GA-38 are within the jurisdiction of Travis County because (1) the Travis County District Court lacks jurisdiction over the suit from which this appeal stems and (2) mandatory venue provisions prevent the Travis County District Court from acquiring jurisdiction over most (if not all) of defendants in these other suits.

First, the Intervenor School Districts presume that Travis County has jurisdiction over the claims asserted in the Travis County suit, even though Appellants' jurisdictional challenge is an issue currently pending before this Court. Intervenor School Districts cannot argue that the State of Texas should bring additional parties and claims into a court the State asserts has no jurisdiction to hear the original claims, as any final decision would be void. *Cook v. Cameron*, 733 S.W.2d 137, 140 (Tex. 1987)

(finding a judgment is void when the court rendering judgment had no jurisdiction of the parties, no jurisdiction of the subject matter, no jurisdiction to enter the judgment, or no capacity to act as a court.)

Additionally, Travis County does not have jurisdiction over all the suits filed against school districts to date or which may be filed in the future because mandatory venue provisions require these suits to be filed in other jurisdictions, and Intervenor School Districts have wholly failed to explain how the Travis County District Court would get around those provisions. For example, school districts located in counties of 100,000 or less must be sued in that county. Tex. Civ. Prac. & Rem. Code § 15.0151. Additionally, only the "district or county court in the county in which the party is domiciled" has jurisdiction to issue an injunction against that party. *Id.* § 65.023. Section 65.023 is not just a mandatory venue statute. Rather, Section 65.023 "is jurisdictional, and does not relate merely to venue." *Butron v. Cantu*, 960 S.W.2d 91, 94 (Tex. App.–Corpus Christi 1997, no writ). There can be no relief issued against school district defendants not domiciled in Travis County that would satisfy Tex. Civ. Prac. & Rem. Code §§ 15.0151 and 65.023; therefore, the State of Texas's claims against such defendants are not within the jurisdiction of the Travis County District Court.

2. Suits Filed by the State of Texas Do Not Arise Out of the Transaction or Occurrence That is the Subject of the Travis County Suit

To determine whether suits arise out of the same transaction or occurrence, courts apply a logical relationship test. *Moore v. First Fin. Resolution Enters., Inc.*, 277

S.W.3d 510, 516 (Tex. App.—Dallas 2009, no pet.). The logical relationship test is met when the same facts, which may or may not be disputed, are significant and logically relevant to both claims. *Id.*

While GA 38 may be a commonality between the Travis County suit and the suits filed by the State of Texas against other school district defendants, the existence of an applicable executive order does not render the subject matter of the two suits relatable. The State of Texas's lawsuits turn on the specific mask mandates the school district defendants have applied within their district; the factual circumstances surrounding these mandates are not the same across all districts. Any relief granted by the courts in which such suits are filed will not affect the parties in the Travis County suit nor deprive them of obtaining relief from that court regarding their disagreement with the validity of GA 38.

Even if this Court were to find the suits filed by the State of Texas arise out of the same transaction or occurrence as the Travis County suit, that is not dispositive. As the Texas Supreme Court has recognized, the mere existence of suits that "present identical issues does not make their proceeding an 'irreparable miscarriage of justice.'" *Golden Rule Ins. Co. v. Harper*, 925 S.W.2d 649, 652 (Tex. 1996) (per curiam) (quoting *Gannon v. Payne*, 706 S.W.2d 304, 307 (Tex.1986)). The existence of other lawsuits regarding GA-38 will not impair this Court's ability to adjudicate the claims before it. *Wyrick v. Business Bank of Texas, N.A.*, 577 S.W.3d 336, 358 (Tex. App.—Houston [14th Dist.] 2019, no pet.).

3. Suits Filed by the State of Texas Require for Their Adjudication the Presence of Third Parties Over Whom the Court Cannot Acquire Jurisdiction

As discussed in Section V(A)(1), above, the Travis County District Court does not have jurisdiction to issue injunctive relief against defendants who are subject to mandatory venue provisions that require the State of Texas to seek injunctive relief against school districts, school district superintendents, boards of trustees, and individual board members in the county in which they are domiciled. Since this requirement is jurisdictional in nature, adjudication of the State of Texas's claims against defendants subject to mandatory venue provisions cannot be adjudicated by the Travis County District Court. *Butron v. Cantu*, 960 S.W.2d 91, 94 (Tex. App.–Corpus Christi 1997, no writ).

Since the suits filed by the State of Texas against school districts defying GA-38 are not within the jurisdiction of the Travis County District Court, do not arise out of the transaction or occurrence as the Travis County suit, and require the presence of third parties over whom the Travis County District Court cannot acquire jurisdiction, neither element of dominant jurisdiction is satisfied and dominant jurisdiction does not apply.

B. Suits Filed by the State of Texas Are Not Evading Important Public Policy or Creating a Multiplicity of Suits

Intervenor School Districts believe that theirs should be the only lawsuit allowed in Texas related to the validity of GA-38 as applied to public schools because there may be inconsistent results in trial courts and in courts of appeals. Multiplicity of suits may support an anti-suit injunction where one party "files numerous lawsuits

to relitigate issues in different courts." *AVCO Corp. v. Interstate Sw., Ltd.*, 145 S.W.3d 257, 266 (Tex. App.—Houston [14th Dist.] 2004, no pet.). However, unlike the authority referenced by Intervenor School Districts in their Emergency Motion, this case does not involve an attempt to relitigate issues between the same parties, which is the traditional concern with multiplicity of suits. *See Gannon v. Payne*, 706 S.W.2d 304, 307 (Tex. 1986).

Instead, Intervenor School Districts are apparently concerned that trial courts may not rule in the same way as other trial courts, or that an appellate court may not rule the same way as a sister appellate court. There is a solution for that issue, which is not new or novel: one or more parties seek review from the Texas Supreme Court, who can then resolve the conflict between appellate courts. This is certainly not the kind of compelling circumstance that would warrant an anti-suit injunction.

C. Suits Filed by the State of Texas Do Not Constitute Harassing Litigation

Intervenor School Districts make two arguments to support their contention that the suits filed by the State of Texas are harassing. First, they claim that by suing Spring ISD[1] and Richardson ISD[2], the State is harassing these school districts. As discussed above, there is no temporary injunction in effect to prevent application of GA-38 to either school district, yet they continue to flout the requirements of GA-

[1] Spring ISD in an intervenor in the Travis County suit to whom the temporary injunction applies.

[2] Richardson ISD intervened in the Travis County suit after the temporary injunction hearing and are not referenced in the temporary injunction.

38, which carry the force and effect of law. Tex. Gov't Code § 418.012. Additionally, the suits against Spring ISD and Richardson ISD include defendants—the superintendent, board of trustees, and individual trustees—that are not part of the Travis County suit and whom, under section 65.023 of the Texas Civil Practice and Remedies Code, must be sued for injunctive relief in the county where they are domiciled. The State has not filed multiple suits or against these school districts—rather, it has filed one suit seeking to enjoin the *ultra vires* actions of these districts. There is no basis for holding these suits constitute harassment.

The second argument advanced by Intervenor School Districts is that filing suits to enjoin any school district from violating GA-38 while waiting for a resolution of this case is harassment. As with their multiplicity argument, Intervenor School Districts rely on cases where the same plaintiff sued parties in multiple suits related to the same underlying decision that the plaintiff was attempting to relitigate. That is simply not the case here. As previously discussed, the suits filed by the State of Texas do not involve the same parties as the Travis County suit that is the subject of this appeal. Moreover, there is no final judgment in the Travis County suit that Appellants are trying to relitigate, and any attempt by Intervenor School Districts to convert their temporary injunction—which is stayed pending appeal—into a final, unassailable judgment is unsupportable.

Intervenor School Districts have failed to show why an anti-suit injunction—a unique and extraordinary remedy that should only be applied in very special circumstances—should be issued against high-ranking officials in the executive branch of

government and the State of Texas to prevent them from carrying out their constitutionally mandated duties and protecting the laws of the State of Texas. The suits Intervenor School Districts seek to enjoin are not a threat to this Court's or the Travis County District Court's jurisdiction as they are separate suits filed against parties subject to mandatory venue provisions. The suits are also not evading public policy, creating a multiplicity of suits, or harassing because they are single lawsuits filed against districts who are not exempted from GA-38 by any temporary injunctive relief in the jurisdictions mandated by mandatory venue provisions. Therefore, there is no basis to award Intervenor School Districts the extraordinary relief they seek.

VI. Suits Filed by the State of Texas Are Not Enforcement Actions.

Intervenor School Districts also argue that by filing suits seeking equitable relief against parties that are violating GA-38, the State of Texas and the Attorney General are somehow contradicting the jurisdictional arguments that are before this Court. The source of this contention appears to be Intervenor School Districts' misconstruction of "enforcement" as it relates to GA-38.

Appellees sued Appellant Abbott (and later added Appellant Paxton and Appellant State) to challenge the validity of GA-38. However, well-established authority requires that to have standing to assert a statutory challenge, the plaintiff must show "'an actual enforcement connection—some enforcement power or act that can be enjoined—between the defendant official and the challenged statute.'" *City of El Paso v. Tom Brown Ministries*, 505 S.W.3d 124, 147 (Tex. App.—El Paso 2016, no

pet.) (quoting *Okpalobi v. Foster*, 244 F.3d 405, 419 (5th Cir. 2001) (en banc)).[3] The Texas Supreme Court in *In re Abbott* affirmed that the Governor and the Attorney General are not the parties responsible for enforcing executive orders. 601 S.W.3d 802, 812 (Tex. 2020). Applying these holdings to this case, Appellees do not have standing to sue Appellants to assert a challenge to GA-38.

The suits filed by the State against parties defying GA-38 is not inconsistent with this jurisdictional argument because these suits are not seeking to enforce GA-38. The Texas Disaster Act provides that an emergency management plan may provide for a criminal offense and proscribe a punishment not to exceed $1,000 or 180-days confinement in jail. Tex. Gov't Code § 418.173. GA-38 is enforced through this criminal offense, stating that "the imposition of any such face covering requirement by a local governmental entity or official constitutes a 'failure to comply with' this executive order that is subject to a fine up to $1,000" and provides that "local official may enforce this executive order." However, this enforcement "will not come in the form a criminal prosecution by the Governor or Attorney General" but from local district attorneys. *In re Abbott*, 601 S.W.3d. at 812. In fact, "the Attorney General

[3] It is well-settled law in Texas that standing requires an actual enforcement connection. In addition to *City of El Paso* and *Okpalobi*, this requirement can be found in: *Shearer v. Reister*, 05-12-01475-CV, 2014 WL 1690479, at *7 (Tex. App.—Dallas Apr. 28, 2014, no pet.); *Am. Veterans, Dep't of Tex. v. City of Austin*, 03-03-00762-CV, 2005 WL 3440786, at *2 (Tex. App.—Austin Dec. 15, 2005, no pet.); *Gilmer Indep. Sch. Dist. v. Dorfman*, 156 S.W.3d 586, 588 (Tex. App.—Tyler 2003, no pet.); *Rylander v. Caldwell*, 23 S.W.3d 132, 138 (Tex. App.—Austin 2000, no pet.); and *Lone Starr Multi Theatres, Inc. v. State*, 922 S.W.2d 295, 298 (Tex. App.—Austin 1996, no writ).

cannot bring such a criminal prosecution without the participation of a district attorney." *Id.*; *see also State ex rel. Hill v. Pirtle*, 887 S.W.2d 921, 930 (Tex. Crim. App. 1994) ("Under our state law, only county and district attorney may represent that state in criminal prosecutions. The Attorney General, on the other hand has no criminal prosecution authority. Rather, the Attorney General is limited to representing the state in civil litigation.").

The State is not seeking to enforce GA-38 through its suits because it is not seeking to charge the defendants in those cases with a criminal offense. Instead, the State is seeking equitable injunctive relief to stop those defendants' *ultra vires* conduct. As a sovereign entity, the State of Texas has the right to ensure the operations of its political subdivisions in accordance with its laws. *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020). The Texas Supreme Court has expressly recognized that "where those laws are being defied or misapplied by a local official, an *ultra vires* suit is a tool 'to reassert the control of the state.'" *Id.* In other words, the State of Texas, through the Attorney General, is not bringing claims against the defendants in these other suits to enforce the criminal penalty of GA-38 but, instead, is bringing suit on behalf of the State of Texas based on those defendants' *ultra vires* conduct, to reassert the State's control.

PRAYER

Intervenor School District's Emergency Motion for Temporary Anti-Suit Injunction should be denied. Appellants further request any additional relief to which they may be entitled.

Respectfully submitted.

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CERTIFICATE OF SERVICE

On September 22, 2021, this document was served electronically on (1) David J. Campbell, lead counsel for the Plaintiff Appellees, via dcampbell@808west.com; (2) Michael Siegel, lead counsel for Intervenor Parent Appellees, via mike@register2vote.org; (3) Gunnar Seaquist, lead counsel for Intervenor ACC Appellee, via gseaquist@bickerstaff.com; and (4) J. David Thompson, lead counsel for Intervenor School Districts, via dthompson@thompsonhorton.com.

/s/ Kimberly Gdula
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Appendix

IN THE SUPREME COURT OF TEXAS

NO. 21-0720

IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS

ON PETITION FOR WRIT OF MANDAMUS

ORDERED:

1. Relator's emergency motion for temporary relief, filed August 23, 2021, is granted. The order on Appellees' Rule 29.3 Emergency Motion for Temporary Order to Maintain Temporary Injunction in Effect Pending Disposition of Interlocutory Appeal, filed August 17, 2021, in Cause No. 04-21-00342-CV, styled *Greg Abbott, in his official capacity as Governor of Texas v. City of San Antonio and County of Bexar*, in the Court of Appeals for the Fourth Judicial District, dated August 19, 2021, is stayed pending further order of this Court.

2. As we previously held in staying the trial court's temporary restraining order in the underlying case, the court of appeals' order alters the status quo preceding this controversy, and its effect is therefore stayed pending that court's decision on the merits of the appeal. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). This case, and others like it, are not about whether people should wear masks or whether the government should make them do it. Rather, these cases ask courts to determine which government officials have the legal authority to decide what the government's position on such questions will be. The status quo, for many months, has been gubernatorial oversight of such decisions at both the state and local levels. That status quo should remain in place while the court of appeals, and potentially this Court, examine the parties' merits arguments to determine whether plaintiffs have demonstrated a probable right to the relief sought.

3. The petition for writ of mandamus remains pending before this Court.

Done at the City of Austin, this Thursday, August 26, 2021.

BLAKE A. HAWTHORNE, CLERK
SUPREME COURT OF TEXAS

BY CLAUDIA JENKS, CHIEF DEPUTY CLERK

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